

PART 89—ORGANIZATIONAL INTEGRITY OF ENTITIES IMPLEMENTING PROGRAMS AND ACTIVITIES UNDER THE LEADERSHIP ACT

Sec.

89.1 Definitions.

89.2 Organizational integrity of recipients.

89.3 Certifications.

AUTHORITY: 22 U.S.C. 7631(f) and 5 U.S.C. 301.

SOURCE: 73 FR 79001, Dec. 24, 2008, as corrected at 74 FR 2888, Jan. 16, 2009, unless otherwise noted.

§ 89.1 Definitions.

For the purposes of this part:

Commercial Sex Act means any sex act on account of which anything of value is given to or received by any person.

Prime Recipients are contractors, grantees, applicants or awardees who receive Leadership Act funds for HIV/AIDS programs directly from HHS.

Prostitution means procuring or providing any commercial sex act.

Recipients are contractors, grantees, applicants or awardees who receive Leadership Act funds for HIV/AIDS programs directly or indirectly from HHS. Recipients include both prime recipients and sub-recipients.

Sex Trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

Sub-Recipients are contractors, grantees, applicants or awardees, other than prime recipients, who receive Leadership Act funds for HIV/AIDS programs from other recipients rather than directly from HHS.

§ 89.2 Organizational integrity of recipients.

(a) A recipient must have objective integrity and independence from any organization that engages in activities inconsistent with a policy opposing prostitution and sex trafficking. A recipient will be found to have objective integrity and independence from such an organization if:

(1) The organization is a legally separate entity;

(2) The organization receives no transfer of Leadership Act funds, and Leadership Act funds do not subsidize

activities inconsistent with a policy opposing prostitution and sex trafficking; and

(3) The recipient is physically and financially separate from the organization. Mere bookkeeping separation of Leadership Act funds from other funds is not sufficient. HHS will determine, on a case-by-case basis and based on the totality of the facts, whether sufficient physical and financial separation exists. The presence or absence of any one or more factors will not be determinative. Factors relevant to this determination shall include, but will not be limited to, the following:

(i) The existence of separate personnel, management, and governance;

(ii) The existence of separate accounts, accounting records, and timekeeping records;

(iii) The degree of separation from facilities, equipment and supplies used by the organization to conduct activities inconsistent with a policy opposing prostitution and sex trafficking, and the extent of such activities by the organization;

(iv) The extent to which signs and other forms of identification that distinguish the recipient from the organization are present, and signs and materials that could be associated with the organization or activities inconsistent with a policy opposing prostitution and sex trafficking are absent; and

(v) The extent to which HHS, the U.S. Government and the project name are protected from public association with the organization and its activities inconsistent with a policy opposing prostitution and sex trafficking in materials such as publications, conferences and press or public statements.

(b) An organization is ineligible to receive any Leadership Act funds unless it has provided the certifications required by § 89.3.

§ 89.3 Certifications.

(a) HHS agencies shall include the certification requirements for any grant, cooperative agreement, contract, or other funding instrument in the public announcement of the availability of the grant, cooperative agreement, contract, or other funding instrument.

(b) Unless the recipient is otherwise excepted, a person authorized to bind the recipient shall execute the certifications for the grant, cooperative agreement, contract, or other funding instrument.

(c) A prime recipient must submit its certifications to the grant or contract officer of the HHS agency that will award funds. A sub-recipient must provide its certifications to the prime recipient. The prime recipient will submit certifications from its sub-recipients when requested to do so by the HHS grant or contract officer.

(d) The certifications shall state as follows:

(1) Organizational Integrity Certification: “I hereby certify that [name of recipient], a recipient of the funds made available through this [grant, cooperative agreement, contract, or other funding instrument], has objective integrity and independence from any organization that engages in activities inconsistent with a policy opposing prostitution and sex trafficking.”

(2) Acknowledgement Certification: “I further certify that the recipient acknowledges that these certifications are a prerequisite to receipt of U.S. Government funds in connection with this [grant, cooperative agreement, contract, or other funding instrument], and that any violation of these certifications shall be grounds for termination by HHS in accordance with the Federal Acquisition Regulations, part 49 for contracts, 45 CFR parts 74 or 92 for grants and cooperative agreements, as well as any other remedies as provided by law.”

(3) Sub-Recipient Compliance Certification: “I further certify that the recipient will include these identical certification requirements in any [grant, cooperative agreement, contract, or other funding instrument] to a sub-recipient of funds made available under this [grant, cooperative agreement, contract, or other funding instrument], and will require such sub-recipient to provide the same certifications that the recipient provided.”

(e) Prime recipients and sub-recipients of funds must file a renewed certification each Fiscal Year, in alignment with the award cycle. Prime re-

cipients and sub-recipients that are already recipients as of the effective date of this regulation must file a certification upon any extension, amendment, or modification of the grant, cooperative agreement, contract, or other funding instrument that extends the term of such instrument, or adds additional funds to it.

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